(2025) 09 BOM CK 0338

In the Bombay High Court, Aurangabad Bench

Case No : First Appeal No. 348 Of 2025

Jalindar Bhausaheb Argade APPELLANT

Vs

Mayur Vinayak Kshirsagar RESPONDENT

Date of Decision : 12-09-2025

Acts Referred:
Motor Vehicles Act 1988 — Section 163A, 173

Citation : (2025) 09 BOM CK 0338

Hon'ble Judges : Ajit B. Kadethankar, J

Bench : Single Bench

Advocate : U.U.Wagh, M.R.Deshmukh

Final Decision : Partly Allowed

Judgement

Ajit B. Kadethankar, J

1. Preface: This is an appeal u/s 173 of the Motor Vehicles Act 1988 (‘the Act of 1988’ for the sake of brevity) preferred by the Claimant seeking enhancement in the compensation granted by the Ld. Motor Accident Claims Tribunal to him against the ‘loss of earning capacity’ sustained by him. As the Owner/Insurer have not challenged the impugned Judgment & Award on any ground, the only issue open to debate is whether the case is fit for enhancement or not.

Hence the appeal is heard finally at the stage of admission at the request of the parties. For the sake of convenience, the parties are referred as to their factual status.

2. Subject matter: Feeling dissatisfied by the judgment and award dated 15.02.2024, delivered by learned Member, Motor Accident Claims Tribunal, Ahmednagar, in M.A.C.P. No.97 of 2021, original applicant/claimant preferred this First Appeal under Section 173 of the Motor Vehicles Act.

3. Brief facts of the case are as under:-

3.1 On 05.07.2020, at about 05.30 p.m. in the vicinity of village Jeur, an accident occurred in between Tavera car bearing registration no.MH16-R-909 and Swift Dzire car bearing registration no.MH16-AB-3991. The appellant together with his son Dinesh were travelling in Tavera car referred above. As a result of the accident, both the vehicles were severely damaged and the appellant sustained grievous injuries resulting into permanent disability.

3.2 The Driver of the Swift Dzire car, i.e. respondent no.1 was prosecuted for causing the accident. The appellant lodged the claim petition, alleging to have sustained permanent disability and loss of earning capacity.

3.3 Under all the headings including the pecuniary and non-pecuniary damages, the appellant showed his entitlement for compensation of Rs.38 Lakhs, however, restricted the claim for Rs.10 Lakhs. The claim was filed against present respondents in the capacity of driver, owner and insurer, respectively of Swift Dzire car bearing registration no.MH16-AD-3991. The claim was opposed by all the respondents by filing their respective written statements. Respondent nos.1 and 2, besides denying every liability alternatively prayed for shelter of insurance under the policy that was issued by respondent No.3. Respondent No.3 - Insurance Company defended the claim on facts as well as law. The insurer disputed the entitlement of quantum claimed, as well as the legal liability to indemnify insured owner and driver.

3.4 After conducting the trial and upon going through the evidence on record, learned Tribunal observed that the accident arose solely due to the rashness and negligence of respondent no.1. Secondly so far as the legal defense raised by the insurance company, it was held `not proved' for want of evidence. While assessing the quantum of compensation, despite agitated by the claimant his income @ Rs.40,000/- per month, learned Tribunal found it appropriate to consider his monthly income on notional basis @ Rs.10,000/- per month.

3.5 The percentage of permanent disability sustained by the claimant was accepted at 24% relying upon the evidence of AW-2 – Dr. Rahul Pandit, which was tendered at Exh.31. The multiplier was applied “M-15” corresponding to the undisputed age of the claimant.

3.6 As such, by adding the future prospects @ 25%, the loss of earning capacity was fixed at Rs.5,40,000/-. Adding reimbursement of the medical bills and non-pecuniary damages, the final compensation was assessed at Rs.6,54,650/-, recoverable jointly and severally from the respondents. Feeling grant of the compensation inadequate, present appeal is raised by the claimant.

4. Heard Mr.U.U.Wagh, learned counsel for the appellant and Mr.Mohit Deshmukh, learned counsel for respondent no.3 – insurer. Since Insurer doesn’t contend breach of policy, he covers the arguments of the owner too. While Ld. Advocate for claimant Mr.Wagh raises a concern over the computation of award compensation taking to his income, Ld. Advocate for the Mr.Deshmukh, learned counsel for respondent No.3 justifies the approach taken by learned Tribunal in the light of the material that was before the Ld. Tribunal, yet fairly agrees that

the computation has to be assessed taking pragmatic view and in the light of the law developed on the point of ‘notional income’.

With the able assistance of learned counsel for the parties, I have gone through the record and various documents pertaining to the claim petition as well as the First Appeal.

5. In the light of above the following points are framed for consideration in the appeal:-

1

Whether the compensation granted by learned Tribunal deserves to be enhanced by re-fixing the Notional Income or otherwise?

Yes

2

If yes, to what extent?

As per final order.

6. Analysis and findings:

6.1 The moot question in such case is , in the absence of any strict income proof what formula should be adopted to assess the loss of earning capacity/loss of dependency, as the case may be. It had been precedent to assess award in such cases considering the income of victim on ‘notional basis’. Notional income is a relative concept and a fictitious figure. There is no formula as to how the notional income should be fixed. When the Act of 1988 was introduced, the second schedule to Section 163-A provided for notional income of Rs.15,000/- per annum in respect of a person whose income cannot be proved.

6.2 Gradually, judicial notes were taken by High Courts as well by Hon'ble Supreme Court and ranging right from Rs.3,000/- p.m. to Rs.15,000/- p.m. have been considered as notional income in case to case, corresponding to the facts of each case.

6.3 For fixing the notional income, in my opinion following factors are relevant:-

(i) Age of claimant or deceased, as the case may be;

(ii) Educational qualification or any such qualification, if held by the claimant or deceased, as the case may be.

(iii) The date of accident and certain surrounding circumstances, which could not be strictly proved but would suggest judicious mind to take note of. (e.g. any such fact, statement evidence suggesting the job or probable income of the victim, extent of family the victim is/was maintaining, etc.)

6.4 In the present case, it was averred by the claimant that he used to work as car-driver, earning approximately Rs.15,000/- p.m. to Rs.20,000/- p.m. out of his business. He also averred that he was additionally earning Rs.15,000/- p.m. to Rs.20,000/- p.m. out of the brokerage in sale and purchase of the vehicles. The claimant also averred to have some agricultural business, paying him Rs.10,000/- p.m. as additional income. Undisputedly, no record or proof was before learned Tribunal in respect of the claimant's alleged income. Hence, learned Tribunal considered the claimant's income on notional basis at Rs.10,000/- p.m.

6.5 In my considered view, while the accident arose in the second half of the year 2020 and while the applicant was at 40 years of his age, his income could have been held at higher level. This is because agreeing that there was no income proof or job proof of the claimant, yet in the absence of any contrary evidence the income could be held moderately on higher side. Reference can be given to the fact that the claimant had possessed Motor Driving License to drive a car.

6.6 Gainful reference can be made to the view expressed by the Honorable Supreme Court recently in the case of "Hitesh Patel V/s Bababhai & another (2025 INSC 1070), wherein reference is given to its earlier pronouncements in 'Baby Sakshi Greola's case (2024 INSC 963) and the case of 'Kajal V/s Jagdish and ors.' (AIR 2020 SC 776).

6.7 The Honorable Supreme Court expressed that practice by the Courts/ Tribunals assessing loss of dependency/loss of earning capacity on the basis of 'Notional Income' in the case of minors, is not correct. That, instead of relying upon wholly hypothesis any such income which at least is identified by the State Govt./Govt. authorities for such certain categories could be considered which shall be uniform and shall have some logical base. Their Lordship, for that purpose cited the Minimum Wages notification published by the concerned State Govts. for the concerned districts for the relevant period.

6.8 While dealing with the cases of persons not having any income proof, the Insurers are called upon to place on record the relevant notifications defining Minimum Wages prevailing in the relevant area and at relevant time, to arrive at 'just and proper' compensation within the meaning of the Act of 1988 which is a piece of social welfare legislation.

6.9 The observations in the case of Hitesh Patel and Baby Sakshi (Supra) has laid down landmark parameters to assess the loss of dependency/loss of earning capacity of minors whose income is not ascertainable for want of service proof, income proof, uncertainty of job & income etc.

6.10 So far as the another category of persons whose income cannot be proved due to uncertainty in the job and variance in the income, for want of documentary evidence etc, but who are in earn-ing state of life, reliance can be placed on a judgment rendered by the Honorable Supreme Court in the case of Chandra @ Chanda @Chandraram & another V/s Mukush Kumar Yadav & Ors.

(C.A. No.6152 of 2021 decided on 01-10-2021) . It was also a case of driver. Their Lordships therein observed that ,

In absence of salary certificate the minimum wage notification can be a yard-stick but at the same time cannot be an absolute one to fix the income of the de-ceased. In absence of documentary evi-dence on record some amount of guess-work is required to be done. But at the same time the guesswork for assessing the income of the deceased should not be totally detached from reality. Merely be-cause claimants were unable to produce documentary evidence to show the monthly income of Shivpal, same does not justify adoption of lowest tier of minimum wage while computing the income.

6.11 In the light of the judgments (supra), I deal with the issue of re-assessing the compensation in the present case. On question-ing Ld. Counsels for both the contesting parties, they submitted that no such notification under Minimum Wages Act or any other rele-vant Act was placed before the Ld. Tribunal.

6.12 At this juncture Ld. Counsel for the Insurer tenders copy of Gazette of India dtd.03-01-2020 published Ministry of Labour and Employment in Part II-Section 3-Sub Section (ii) wherein it was noti-fied that ☐ 15,000/- would be the minimum wages. Copy of the said Gazette notification is taken on record and marked as 'X' for the pur-pose of identification.

6.13 Ld. Counsel for the Insurer submits further that although vide the notification scale was laid down to assess workman's com-pensation which is assessed on different formula unlike the formula under Motor Vehicles Act 1988, yet for grant of 'just and proper' compensation can be reassessed in the present case too. He further submits that the said notification still hold field. Mr. Mohit Deshmukh, Ld. Counsel was fair enough to re-assess the compensation holding claimant's income @ ☐ 15,000/- p.m.

6.14 Shri U.U.Wagh expressed no hesitation in accepting and agreeing with argument advanced by the Insurer.

6.15 As I recorded above, there is no straitjacket formula for holding the notional income of a person and it is purely a mindful guess work, which has to be applied judiciously in above terms considering the notifications published by the concerned Govt. authorities defining minimum wages from time to time, ensuring that the end result out of that would neither be a pittance nor a bonanza.

6.16 Under these circumstances, in my considered view holding claimant's income @ Rs.15,000/- p.m. instead of Rs.10,000/- p.m., would meet the ends of justice and the compensation would mean 'just and proper' within the meaning of the Motor Vehicles Act 1988.

6.17 It would be not out of place to mention here that while assessing compensation in the cases of persons whose income cannot be proved with evidence, Ld. Tribunal and the parties would take recourse to the Minimum wages notifications, or any such notification published by the Govt. authorities laying down scale of minimum wages, and would adopt a realistic approach to add needful something more corresponding to the facts of each case, as is directed by the Honorable Supreme Court in the cases of Chandra @ Chanda (Supra), Hitesh Patel (Supra), Baby Sakshi Greola (supra) and Kajal (supra).

7. Conclusion:- As such, the calculations arrived at by learned Tribunal would stand modified. The modified compensation could be seen as follows:-

Sr. No.

Particulars

Amount awarded by Tribunal (Rs)

Effective Enhancement (Rs)

1

Monthly income

10,000/-

15,000/-

2

Annual Income

1,20,000/-

1,80,000/-

3

Multiplier of 15, i.e. x 15

18,00,000/-

27,00,000/-

4

Future prospects 25%

4,50,000/-

6,75,000/-

(3+4)

Rs.22,50,000/-

(3+4)

Rs.33,75,000/-

5

Loss of earning capacity [24%]

5,40,000/-

8,10,000/-

6

Medical bills

9,650/-

9,650/-

7

Pain and suffering

50,000/-

50,000/-

8

Loss of aminities (future happiness)

50,000/-

50,000/-

9

Special diet

5,000/-

5,000/-

10

Future medical expense

50,000/-

TOTAL

6,54,650/-

9,74,650/-

Hence, the final award stands enhanced by ☐ 3,20,000/-.

8. Order : Hence, I pass the following order:-

(i) The appeal is partly allowed;

(ii) The impugned judgment and award stands modified at its clause no.2, thereby making the compensation Rs.9,74,650/- instead of Rs.6,54,650/-.

(iii) The enhanced compensation shall be deposited in this Court by the Insurance Company within a period of 08 weeks from today together with accrued interest. The Appellant shall be at liberty to withdraw the same.

(iv) Deficit court fees if any, shall be paid by the Appellant before withdrawal of any amount.

(v) Rest part of the impugned judgment and award remains as it is.

(vi) Award be modified accordingly.

